

CCRB INVESTIGATIVE RECOMMENDATION

Investigator Assigned: [REDACTED]	Team: Squad #6	CCRB Case # : 201808958	<input type="checkbox"/> Force <input type="checkbox"/> Discourtesy <input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input type="checkbox"/> Injury
Date/Time of Incident: Thu, 10/25/2018 03:58 PM	Location of Incident: In front of 2279 West 7th Street	Pct. of Occurrence: 61	Date S.O.L. Expires: 04/25/2020
Date/Time C/V Reported: Mon, 10/29/2018 12:22 PM	C/V Reported At: CCRB	How C/V Reported: Phone	Date/Time Received at CCRB: Mon, 10/29/2018 12:22 PM

Complainant/Victim	Type	Home Address
1. D [REDACTED] R [REDACTED]	Comp/Victim	[REDACTED]

Witness(es)	Home Address
1. Robin Unknown	Unknown

Subject Officer(s)	Shield	TaxID	Command
1. SGT M [REDACTED] M [REDACTED]	04545	[REDACTED]	NARCBBS
2. SGT M [REDACTED] S [REDACTED]	03721	[REDACTED]	NARCBBS
3. DT3 Paul Mallilo	2575	949246	NARCBBS
4. DT3 R [REDACTED] J [REDACTED]	5406	[REDACTED]	NARCBBS
5. DT3 D [REDACTED] A [REDACTED]	3742	[REDACTED]	NARCBBS
6. DT3 S [REDACTED] F [REDACTED]	1245	[REDACTED]	NARCBBS

Witness Officer(s)	Shield	TaxID	Command
1. DTS UC #1 [REDACTED]		000000	NARCBBS
2. UC #2 [REDACTED]		000000	NARCBBS

Officer(s)	Allegation	Recommendation
A. SGT M [REDACTED] M [REDACTED]	[REDACTED]	[REDACTED]
B. SGT M [REDACTED] S [REDACTED]	[REDACTED]	[REDACTED]
C. DT3 Paul Mallilo	Abuse of Authority: Detective Paul Mallilo stopped D [REDACTED] R [REDACTED]	C. Substantiated
D. DT3 Paul Mallilo	Abuse of Authority: Detective Paul Mallilo frisked D [REDACTED] R [REDACTED]	D. Substantiated
E. DT3 Paul Mallilo	Abuse of Authority: Detective Paul Mallilo searched D [REDACTED] R [REDACTED]	E. Substantiated
F. SGT M [REDACTED] S [REDACTED]	[REDACTED]	[REDACTED]
G. SGT M [REDACTED] S [REDACTED]	[REDACTED]	[REDACTED]
H. SGT M [REDACTED] S [REDACTED]	[REDACTED]	[REDACTED]

CCRB INVESTIGATIVE RECOMMENDATION

Officer(s)	Allegation	Recommendation
I. SGT M [REDACTED] M [REDACTED]	[REDACTED]	[REDACTED]
J. SGT M [REDACTED] S [REDACTED]	[REDACTED]	[REDACTED]
K. DT3 Paul Mallilo	Abuse of Authority: Detective Paul Mallilo failed to provide D [REDACTED] R [REDACTED] with a business card.	K. Exonerated
L. DT3 R [REDACTED] J [REDACTED]	[REDACTED]	[REDACTED]
M. DT3 D [REDACTED] A [REDACTED]	[REDACTED]	[REDACTED]
N. DT3 S [REDACTED] F [REDACTED]	[REDACTED]	[REDACTED]
O. SGT M [REDACTED] M [REDACTED]	[REDACTED]	[REDACTED]
P. DT3 Paul Mallilo	Other: Detective Paul Mallilo failed to prepare a memo book entry as required by Patrol Guide Procedure 212-08.	P. Other Misconduct
Q. DT3 R [REDACTED] J [REDACTED]	[REDACTED]	[REDACTED]
R. DT3 S [REDACTED] F [REDACTED]	[REDACTED]	[REDACTED]
S. DT3 Paul Mallilo	Other: Detective Paul Mallilo failed to prepare a stop and frisk report as required by Patrol Guide Procedure 212-11.	S. Other Misconduct

Case Summary

On October 29, 2018, D [REDACTED] R [REDACTED] called the CCRB and filed this complaint.

On October 25, 2018, at approximately 3:58 p.m., Mr. R [REDACTED] was talking on the phone in front of his garage, located at 2279 West 7th Street in Brooklyn, when Sergeant M [REDACTED] M [REDACTED] Sergeant M [REDACTED] S [REDACTED] and Detective Paul Mallilo—all of Narcotics Borough Brooklyn South—who were in the area to conduct a buy-and-bust operation, pulled up behind him in an unmarked minivan, and stopped and handcuffed him (**Allegations A, B, and C: Abuse of Authority, substantiated**). Sgt. S [REDACTED] took possession of one of Mr. R [REDACTED] cell phones. Det. Mallilo frisked Mr. R [REDACTED] and searched his front sweatshirt pocket and pants pocket repeatedly (**Allegations D: Abuse of Authority, substantiated; Allegation E: Abuse of Authority, substantiated**). Det. Mallilo recovered a folding pocket knife from Mr. R [REDACTED] right front pants pocket. Sgt. S [REDACTED] threatened to arrest Mr. R [REDACTED] for possession of the knife (**Allegation F: Abuse of Authority, substantiated**). Detective R [REDACTED] J [REDACTED] Detective D [REDACTED] A [REDACTED] and Detective S [REDACTED] F [REDACTED]—all of Narcotics Borough Brooklyn South, as well—arrived in a second unmarked vehicle a few minutes later. After it was determined that Mr. R [REDACTED] was the incorrect suspect, Sgt. S [REDACTED] returned Mr. R [REDACTED] knife and cell phone, which Sgt. S [REDACTED] had allegedly turned off (**Allegation G: Abuse of Authority, unsubstantiated; Allegation H: Abuse of Authority, unsubstantiated**). Mr. R [REDACTED] was neither arrested nor issued any summonses, and did not receive any business cards from any officer (**Allegations I–N: Abuse of Authority, exonerated**). Sgt. M [REDACTED] Det. Mallilo, Det. J [REDACTED] and Det. F [REDACTED] all failed to prepare memo book entries regarding this incident as required (**Allegations O, P, Q, and R: Other Misconduct**). Det. Mallilo failed to prepare a stop and frisk report as required (**Allegation S: Other Misconduct**).

Three angles of surveillance footage from outside of Mr. R [REDACTED] garage captured the incident in its entirety. Mr. R [REDACTED] also recorded a brief video on his cell phone at the end. The three angles of surveillance footage and their corresponding summaries can be found in IAs #73 (**Board Review 01**) and #230 (**Board Review 02**); #74 (**Board Review 03**) and #231 (**Board Review 04**); and #75 (**Board Review 05**) and #232 (**Board Review 06**). Mr. R [REDACTED] cell phone footage and its summary can be found in IAs #19 (**Board Review 07**) and #25, respectively.

Findings and Recommendations

Allegation A—

Allegation B—

Allegation C—Abuse of Authority: Detective Paul Mallilo stopped D [REDACTED] R [REDACTED]

An attorney was consulted regarding these allegations.

The synthesized narrative from the surveillance footage (**Board Review 01, 03, 05**) is as follows. See the surveillance footage video summaries (**Board Review 02, 04, 06**) for detailed time stamp descriptions and a play-by-play from each camera angle. On October 25, 2018, at approximately 3:57 p.m., Mr. R [REDACTED] crossed 86th Street in Brooklyn and walked toward his garage, located at 2279 West 7th Street. Mr. R [REDACTED] was talking on the phone and carrying a plastic shopping bag. He wore a gray hooded sweatshirt with the hood up as well as black pants. Mr. R [REDACTED] crossed 86th Street and walked shortly down West 7th Street before walking onto the sidewalk, where he remained for a few minutes while talking on the phone. During this time, several other males wearing hooded jackets of some sort were walking nearby on 86th Street and crossing West 7th Street. The area was busy with vehicular and pedestrian traffic. Approximately

one minute after Mr. R [REDACTED] stopped near his garage, the field team's assist vehicle drove past his location and stopped briefly near him before driving around the block. A few minutes later, the field team's leader car pulled up behind Mr. R [REDACTED] at which point Det. Mallilo, Sgt. M [REDACTED] and Sgt. S [REDACTED] stopped and handcuffed him. Det. J [REDACTED] Det. A [REDACTED] and Det. F [REDACTED] arrived, but Sgt. M [REDACTED] and Det. F [REDACTED] drove away in the leader car shortly thereafter, while the other officers remained on scene with Mr. R [REDACTED]. Several minutes later, Mr. R [REDACTED] was unhandcuffed and released as the remaining officers drove away in the assist vehicle.

On October 25, 2018, at approximately 3:58 p.m., Narcotics Borough Brooklyn South's Tactical Response Team (TRT or 'field team') was conducting narcotics enforcement operations (**Board Review 08**) in the vicinity of the Marlboro Houses in Brooklyn, a NYCHA complex covering several city blocks, approximately two blocks away from Mr. R [REDACTED] garage. The field team included the primary undercover (UC #1 [REDACTED]) and the secondary undercover or 'ghost' (UC #3 [REDACTED]); Team Leader Sgt. M [REDACTED] who rode in the unmarked minivan leader car with Det. Mallilo and Sgt. S [REDACTED] and Det. J [REDACTED] Det. A [REDACTED] and Det. F [REDACTED] in the assist vehicle. Shortly before 4:00 p.m., UC #1 [REDACTED] engaged in a buy with R [REDACTED] S [REDACTED] in the courtyard of 2800 86th Street in Brooklyn. UC #1 [REDACTED] purchased \$30-worth of alleged crack cocaine from Mr. S [REDACTED] using pre-recorded buy money (PRBM). At least one of the UCs provided a physical description of the seller and the seller's location to Sgt. M [REDACTED] which he relayed to the rest of the field team. The description at least included that the seller was a male wearing a hooded sweatshirt within a few-block radius of the Marlboro Houses. The only reason why Mr. R [REDACTED] was stopped was because the members of the field team believed that he fit this description.

The field team later learned that Mr. R [REDACTED] was not the seller. Within a half-hour, by approximately 4:30 p.m., the field team apprehended the correct suspect, Mr. S [REDACTED] near the Marlboro Houses. Mr. S [REDACTED] was arrested (**Board Review 09**) and transported back to the local stationhouse for processing. Mr. R [REDACTED] was not arrested or issued any summonses.

Based on all of the available evidence—including testimony from Mr. R [REDACTED] and all of the officers, as well as NYPD documents like the UC Buy Report prepared by UC #1 [REDACTED] (**Board Review 10**) and Mr. S [REDACTED]'s arrest report prepared by Det. Mallilo (**Board Review 09**), in addition to Mr. R [REDACTED] surveillance footage (**Board Review 01, 03, 05**), Mr. R [REDACTED] cell phone footage (**Board Review 07**) and still images from that footage (**Board Review 11, 12**), and a photograph taken of Mr. R [REDACTED] at his CCRB interview (**Board Review 13**)—the investigation determined the following. No photograph of Mr. S [REDACTED] was available (**Board Review 14**). At the time of the incident:

- R [REDACTED] S [REDACTED] was a 19-year-old, dark-skinned black male, standing 5'9" tall and weighing 140 pounds, with short black hair. He was wearing a blue denim jacket over a black hooded sweatshirt, blue jeans, blue-and-white Nike sneakers, and was inside the Marlboro Houses complex.
- D [REDACTED] R [REDACTED] was a 48-year-old, light-skinned Hispanic male, standing 6'0" tall and weighing 200 pounds, and was bald. He was wearing a gray hooded sweatshirt, black pants, brown leather shoes, and was talking on the phone with his hood up while holding a plastic bag outside of his garage, located at [REDACTED] West 7th Street, which is approximately a few blocks away from the Marlboro Houses.

UC #1 [REDACTED] provided consistent statements across the UC Buy Report (**Board Review 10**), his memo book entries (**Board Review 15**), and his CCRB interview testimony (**Board Review 16**) regarding the buy-and-bust operation in general and the descriptions of the seller in particular. UC #1 [REDACTED]'s memo book entries (**Board Review 15**) note that the undercover officers set up at [REDACTED]

██████████ before executing the buy-and-bust, and that the sale occurred in front of 2800 86th Street. In the Buy Report, UC #1 ██████ described Mr. Smith's physical appearance as follows: "Male black approximately 19 years old, 5 ft. 9 in. tall, 140 pounds, brown eyes, short hair, wearing black hooded sweatshirt, blue denim jacket, blue jeans, and blue and white Nike sneakers." UC #1 ██████ also noted in the Buy Report that the transaction occurred at 2800 86th Street, and that, after the transaction occurred, he "left the location and advised the field team of what had transpired" (**Board Review 10**).

During his CCRB interview, UC #1 ██████ testified (**Board Review 16**) that he had purchased drugs from Mr. S ██████ weeks prior, and called him on the afternoon of October 25, 2018, to arrange another sale before apprehending him. Over the phone, Mr. S ██████ instructed UC #1 ██████ to meet him in the Marlboro Houses' courtyard at 2800 86th Street in Brooklyn. UC #1 ██████ went to the buy location, with UC #3 ██████ following closely behind. Mr. S ██████ and UC #1 ██████ exchanged \$30 of PRBM for one Ziploc of alleged crack cocaine. UC #1 ██████ walked away, and Mr. S ██████ walked across the street to a store directly across from the courtyard of 2800 86th Street before returning to the courtyard shortly after. As UC #1 ██████ walked back to his unmarked car from the buy location, he personally provided a specific and detailed physical description of Mr. S ██████ to Sgt. M ██████ over the phone that was consistent with the description in the UC Buy Report. UC #1 ██████ did not remember the exact wording of his description to Sgt. M ██████ but did remember at least saying that Mr. S ██████ was wearing a black hoodie, a blue jacket, and blue jeans. UC #1 ██████ clarified that the description he provided over the phone would have contained all of the information from the UC Buy Report. This buy-and-bust operation was "simple," as far as UC #1 ██████ was concerned.

UC #1 ██████ (**Board Review 16**) stated that Mr. S ██████ looked "unique"—so much so, that it was "easy" to identify and arrest him. UC #1 ██████ independently described Mr. S ██████ with attributes consistent with those listed in the UC Buy Report. After being shown a photograph of Mr. R ██████ taken at his CCRB interview, UC #1 ██████ denied ever having seen Mr. R ██████ before, and described Mr. R ██████ physical appearance as "completely different" as he was lighter-skinned than Mr. S ██████ and possibly Hispanic, whereas Mr. S ██████ looked black with darker skin. In addition, Mr. R ██████ looked twice as old and was bald.

UC #3 ██████ provided generally consistent statements in his memo book (**Board Review 17**) and his CCRB interview (**Board Review 18**). In his memo book entries, UC #3 ██████ wrote that the positive buy occurred in front of 2800 86th Street. In his CCRB interview, UC #3 ██████ stated that he was standing less than 10 feet away from UC #1 ██████ when he personally witnessed the narcotics transaction. Both UC #1 ██████ and UC #3 ██████ transmitted a description of the seller to the field team. UC #3 ██████ did not remember exactly what the seller looked like, but described him as a "young" black male, possibly in his 20s. UC #3 ██████ did not remember what Mr. S ██████ was wearing during the operation. UC #3 ██████ was shown a photograph of Mr. R ██████ taken at his CCRB interview, and denied that he had ever seen Mr. R ██████ before. UC #3 ██████ did not remember whether Mr. R ██████ looked similar or dissimilar to Mr. S ██████. UC #3 ██████ did not remember whether Mr. S ██████ had his hood up or was talking on the phone. UC #3 ██████ was read a portion of Sgt. S ██████'s memo book entries (**Board Review 19**) for this incident, which state: "Description of seller from ghost: male, gray hoodie, jeans, on phone, hood up." As the ghost, UC #3 ██████ did not remember providing that description, but descriptions of that sort are generally what UCs would normally provide.

Team Leader Sgt. M ██████ testified (**Board Review 20**) that he received a description of the seller's appearance and location from UC #3 ██████ after the buy occurred. He remembered that the ghost described the seller as a male wearing either a blue or gray hooded sweatshirt. The

ghost's description omitted the suspect's race. The location of the buy provided by UC #3 was "almost exactly" where Mr. R was ultimately stopped: the corner of 86th Street and West 7th Street. There may have been additional information in the description from UC #3, but Sgt. M did not remember it at his interview. The leader car stopped Mr. R approximately "a few minutes" after receiving the description from UC #3. Mr. R was wearing "either a light blue or gray hoodie." There was nothing else about Mr. R's appearance that matched the ghost's description, as far as Sgt. M could remember. Mr. R was "the only person that—in the vicinity that seemed to fit it [the ghost's description] initially." Mr. R had his back turned to the leader car upon their approach.

As the assigned arresting officer for this buy-and-bust operation, Det. Mallilo prepared Mr. S's arrest report (**Board Review 09**), which noted that Mr. S exchanged narcotics for PRBM with UC #1. PRBM was recovered on Mr. S's person during arrest. Det. Mallilo listed Mr. S's pedigree information as a 19-year-old, dark-skinned black male, standing 5'9" tall, weighing 140 pounds, with short black hair in a "Caesar" style. Det. Mallilo listed Mr. S's clothing as including blue jeans, blue sneakers, and blue "outerwear—other." Sgt. M signed off on Mr. S's arrest report. Det. Mallilo was also the affiant for the criminal court complaint (**Board Review 21**) regarding Mr. S's criminal case stemming from his arrest in this incident.

Det. Mallilo testified (**Board Review 22**) that he did not remember how the UCs provided the description, or whether he heard it firsthand or through Sgt. M. Det. Mallilo did not remember the description the ghost provided, but did remember that the seller was at least described as a male, and may have also been described as wearing a blue hoodie and blue jeans. There was no information about the seller's activities or actions aside from the report of a positive narcotics sale. The ghost reported the seller's location as the intersection of 86th Street and West 7th Street. Upon receiving this description, the leader car drove to that location, and Det. Mallilo first observed Mr. R there. Det. Mallilo believed that Mr. R "matched the description" provided by the ghost, as he was the only male at that location that Det. Mallilo felt fit the description. Mr. R was wearing the "same description that was given to us from the ghost." Det. Mallilo identified himself as a police officer upon approach.

Sgt. S's statements in his memo book entries for this incident (**Board Review 19**) and his CCRB interview (**Board Review 23**) were internally consistent, in that the description of the seller that UC #3 provided was of a male who was wearing jeans and a gray hoodie with the hood up, talking on the phone in the vicinity of 86th Street and West 7th Street, which is very close to the Marlboro Houses. Initially, he testified that there was no additional information included in the description, but later said race may have been included. He denied that the ghost included any reference to the suspect's real or apparent age. After receiving the description, the leader car canvassed for approximately five minutes before observing and stopping Mr. R because he fit the description of being a male wearing jeans and a gray hoodie with the hood up while talking on the phone, in the vicinity of 86th Street and West 7th Street. Mr. R was "calm" as Sgt. S, Sgt. M, and Det. Mallilo approached him.

The three detectives in the assist vehicle—Det. A (**Board Review 24**), Det. F (**Board Review 25**), and Det. J (**Board Review 26**)—all consistently testified, either of their own accord or once prompted by their legal representatives, that Mr. R "fit the description" of the seller from the UCs, although they did not remember the actual description itself or what Mr. R himself was wearing. Still, Det. A testified that Mr. R "looked exactly like" the description of the seller. None of the detectives in the assist vehicle remembered

the seller's described location. Det. J. [REDACTED] however, testified that it was "somewhere around West 7th [Street]," which was "not that far" from where Mr. R. [REDACTED] was ultimately stopped.

"Whenever an individual is physically or constructively detained by virtue of a significant interruption of his liberty of movement as a result of police action, that individual has been seized within the meaning of the Fourth Amendment." People v. Cantor, 36 N.Y.2d 106 (1975), internal citations omitted (**Board Review 27**). A police officer can stop a potential suspect in a buy-and-bust operation based solely on an undercover officer's description of the suspected seller only if the person being stopped "reasonably fit[s]" that description. People v. Castro, 206 A.D.2d 333 (1st Dept. 1994) (**Board Review 28**).

It is undisputed that, under Cantor, Mr. R. [REDACTED] was considered to have been stopped the moment that Det. Mallilo, Sgt. M. [REDACTED] and Sgt. S. [REDACTED] rushed up to him, encircled him, and handcuffed him on the sidewalk next to his parked vehicle. It is further undisputed that the only reason the field team's leader car had for stopping Mr. R. [REDACTED] was that they believed, based on the descriptions of the seller in the buy-and-bust operation, that Mr. R. [REDACTED] had just sold narcotics to UC #1 [REDACTED]. Under Castro, the stop of Mr. R. [REDACTED] would be justified in these circumstances only if Mr. R. [REDACTED] "reasonably fit" the description of the seller provided by the undercover officers. As described below, the investigation has determined that the description of the seller that the field team received was *not* a description that Mr. R. [REDACTED] "matched" or otherwise "reasonably fit."

Although Sgt. S. [REDACTED] wrote in his memo book that the ghost described the seller as a male talking on the phone and wearing a gray hooded sweatshirt with the hood up and jeans—a description that does mostly match Mr. R. [REDACTED]—the oral and written evidence provided by the primary undercover, UC #1 [REDACTED], shows how unreliable Sgt. S. [REDACTED] memo book entry is. It is undisputed that UC #1 [REDACTED] personally observed Mr. S. [REDACTED] at close range, in broad daylight, during the buy. UC #1 [REDACTED] provided a detailed description of the seller in his Buy Report and CCRB interview that directly contradicts what Sgt. S. [REDACTED] said was the seller's description with respect to the color of the hooded sweatshirt and the color and type of pants. The seller's physical appearance included several other notable articles of clothing that reasonably would have been included in the description but are not included in Sgt. S. [REDACTED] memo book entry. UC #1 [REDACTED] never described the seller as having his hood up or talking on the phone. Thus the investigation is discrediting Sgt. S. [REDACTED] memo book entry with respect to the contents of the ghost's description.

The investigation has also determined that Sgt. M. [REDACTED] Sgt. S. [REDACTED] Det. Mallilo, Det. A. [REDACTED] Det. J. [REDACTED] and Det. F. [REDACTED] consistent refrain that Mr. R. [REDACTED] "fit the description" of the seller from the UCs is neither reliable nor accurate. Almost all of them were unable to provide the contents of the description or an independent recollection of what Mr. R. [REDACTED] was wearing. UC #1 [REDACTED], on the other hand, provided consistent, detailed descriptions of Mr. S. [REDACTED]'s appearance, both in his Buy Report and his CCRB interview. UC #1 [REDACTED]'s ability to observe Mr. S. [REDACTED]'s appearance, and Mr. S. [REDACTED]'s appearance itself, are not even in dispute. UC #1 [REDACTED] provided a specific, "detailed" description of Mr. S. [REDACTED] to Sgt. M. [REDACTED] over the phone as he walked away from the buy location. Thus it stands to reason that UC #1 [REDACTED] most likely provided a description that was consistent with Mr. S. [REDACTED]'s contemporaneous appearance. As described above, Mr. S. [REDACTED] and Mr. R. [REDACTED] appearances differed in almost every observable way, so Mr. R. [REDACTED] did not "reasonably fit" the seller's description. Thus Det. Mallilo, Sgt. M. [REDACTED] and Sgt. S. [REDACTED] unlawfully stopped him under Castro. It is therefore recommended that **Allegations A, B, and C** be closed as *substantiated*.

Allegation D—Abuse of Authority: Detective Paul Mallilo frisked D [REDACTED] R [REDACTED]
Allegation E—Abuse of Authority: Detective Paul Mallilo searched D [REDACTED] R [REDACTED]

An attorney was consulted regarding these allegations.

The synthesized narrative from the surveillance footage (**Board Review 03, 05**) is as follows. See the surveillance footage video summaries (**Board Review 04, 06**) for detailed time stamp descriptions from each angle. As soon as Det. Mallilo approaches Mr. R [REDACTED] he wraps his arms around Mr. R [REDACTED] stomach. Det. Mallilo then puts both his right and left hands inside of Mr. R [REDACTED] front sweatshirt pocket for a few seconds and removes some objects. Det. Mallilo then lifts up the front of Mr. R [REDACTED] sweatshirt with his right hand and puts fingers from his left hand immediately inside of Mr. R [REDACTED] right front pants pocket. Det. Mallilo does not appear to pat down the outside of the pocket before entering it with his fingers. Det. Mallilo then appears to squeeze an object inside of Mr. R [REDACTED] right front pants pocket before fully entering the pocket with his entire left hand and removing an object, identified by the investigation as a knife. Det. Mallilo then repeatedly enters and re-enters Mr. R [REDACTED] right front pants pocket and rummages around inside—even after removing the object he had squeezed in the pocket in the first place.

As described above in **Allegations A–C**, the field team believed that Mr. R [REDACTED] “fit the description” of the person who had just sold narcotics to UC #1 [REDACTED] as part of the buy-and-bust operation. Prior to Mr. R [REDACTED] being stopped, no officer observed any bulges on his person. Mr. R [REDACTED] did have a small, folding pocket knife clipped to the inside of his right front pants pocket, but his sweatshirt obscured it from view. No officer observed any knives clipped upon approach.

Det. Mallilo testified (**Board Review 22**) that he did not suspect Mr. R [REDACTED] specifically, of being armed, and did not suspect Mr. R [REDACTED] of committing any offenses besides allegedly selling narcotics to UC #1 [REDACTED]. Det. Mallilo stated that “it is typical that drug dealers carry weapons on them, be it knives or firearms,” but acknowledged that he did not have any specific, individualized reason to believe that Mr. R [REDACTED] himself was armed. Det. Mallilo frisked Mr. R [REDACTED] by patting down his pants, and had no other reason for frisking Mr. R [REDACTED] besides thinking that Mr. R [REDACTED] was a drug dealer, and thinking that drug dealers are usually armed.

During the frisk, Det. Mallilo felt a “hard object” in a “long oval shape with ridges,” which he believed was “the shape of a pocket knife,” in Mr. R [REDACTED] right front pants pocket. Det. Mallilo asked Mr. R [REDACTED] about it, and Mr. R [REDACTED] said it was a pocket knife. Det. Mallilo entered that pocket to retrieve the knife and did recover one. The knife was “just a foldable” knife and lawful to possess. Det. Mallilo did not remember if he frisked or entered any other pockets. Det. Mallilo was shown a portion of the surveillance video (**Board Review 05**) that depicts him entering Mr. R [REDACTED] front sweatshirt pocket before frisking Mr. R [REDACTED] right front pants pocket or recovering the knife. Det. Mallilo acknowledged that he did so but lacked an independent recollection of doing it. Det. Mallilo had no specific reason to believe that the front sweatshirt pocket contained a weapon, besides his belief that all drug dealers are often armed.

During his CCRB interview (**Board Review 22**), Det. Mallilo was also shown the portions of the surveillance footage (**Board Review 05**) that depict him repeatedly entering Mr. R [REDACTED] right front pants pocket, even after he removes the object from it. Det. Mallilo stated that he continued to enter the pocket “to see if there’s [sic] any weapons.” Det. Mallilo was asked if, after removing the object from the pocket, he continued to believe that there were still more weapons therein. In response, Det. Mallilo said, “It’s possible,” but he did not remember feeling anything to suggest that that was the case.

Generally, an officer may frisk a civilian only if the officer possesses a particularized, reasonable suspicion that the suspect “is armed and may be dangerous.” *People v. Russ*, 61

N.Y.2d 693 (1984) (**Board Review 29**). Lawful frisks require that “[t]he police officer...articulate specific inferences, drawn from the particular facts, which, in light of his experience, would cause a reasonably prudent man in such circumstances to harbor a rational belief in danger.” People v. Watson, 96 A.D.2d 1066 (2nd Dept. 1983) (**Board Review 30**). Absent a specific, articulated fear that a suspect is armed and dangerous, however, an officer may still frisk a suspect—but only if he has reasonable suspicion that the suspect “has committed, is committing or is about to commit *such a serious and violent crime as robbery or...burglary.*” People v. Mack, 26 N.Y.2d 311 (1970), emphasis added (**Board Review 31**).

Under People v. DeBour, 40 N.Y.2d 210 (1976) (**Board Review 32**), when an officer’s level of suspicion rises above DeBour’s Level 3 (reasonable suspicion) to DeBour’s Level 4 (probable cause), the officer may arrest the suspect and conduct a ‘search incident to a lawful arrest’ (SILA). DeBour, supra. A warrantless search is considered to be justified as a SILA only if it is “incident to an *actual* arrest, not just probable cause that might have led to an arrest, but did not.” People v. Reid, 24 N.Y.3d 615 (2014), emphasis added (**Board Review 33**).

The Mack exception to the general armed-and-dangerous requirement for frisks does not apply here, as the members of the leader car only suspected Mr. R [REDACTED] of selling a small amount of narcotics to UC #1 [REDACTED]—a non-violent crime under NY Penal Law § 220.39(01) (**Board Review 34**). As such, according to Russ and Watson, the frisk could only have been justified if Det. Mallilo possessed independent reasonable suspicion that Mr. R [REDACTED] was armed and dangerous.

Yet the evidence demonstrates that Det. Mallilo had no such suspicion to justify his frisk. Det. Mallilo acknowledged that he had no specific reason to think Mr. R [REDACTED] was armed or dangerous, except his general belief that drug dealers tend to be armed. Det. Mallilo repeatedly acknowledged a lack of individualized, articulable suspicion that Mr. R [REDACTED] himself was armed and dangerous. Only once Det. Mallilo frisked Mr. R [REDACTED] pants pocket did he feel an object that he believed to be a knife. Mr. R [REDACTED] only acknowledged that he had a knife on him after Det. Mallilo frisked the pocket and asked him about it. Det. Mallilo’s vague association between low-level drug-dealing and weapons-possession is speculative and lacks the particularized roots required by law for a proper frisk. As such, Det. Mallilo unlawfully frisked Mr. R [REDACTED] under Russ and Watson. It is therefore recommended that **Allegation D** be closed as *substantiated*.

As described above in the previous analyses of **Allegations A–D**, Det. Mallilo did not have reasonable suspicion to stop and frisk Mr. R [REDACTED]. As such, he necessarily did not have the higher standard of probable cause to arrest and search him incident to that arrest under DeBour, either. But even if Det. Mallilo did have probable cause to arrest Mr. R [REDACTED] the search cannot be justified as a SILA because, under Reid, SILAs require an “actual arrest” and Mr. R [REDACTED] was not arrested. The warrantless search was unlawful in its inception because Det. Mallilo immediately entered Mr. R [REDACTED] front sweatshirt pocket before he frisked the pants pocket and felt the knife. The results of the subsequent frisk of the pants pocket cannot justify the preceding search of the sweatshirt pocket. It is therefore recommended that **Allegation E** be closed as *substantiated*.

Allegation F—Abuse of Authority: Sergeant M [REDACTED] S [REDACTED] threatened to arrest D [REDACTED]
R [REDACTED]

[REDACTED]

[REDACTED]

Det. Mallilo testified (**Board Review 22**) that Mr. R [REDACTED] knife was not a gravity knife but rather “just a foldable” knife, and thus lawful to possess.

[REDACTED]

[REDACTED]

Allegation G—Abuse of Authority: Sergeant M [REDACTED] S [REDACTED] searched D [REDACTED] R [REDACTED] recording device.

Allegation H—Abuse of Authority: Sergeant M [REDACTED] S [REDACTED] interfered with D [REDACTED] R [REDACTED] use of a recording device.

[REDACTED]

Allegation I—Abuse of Authority: Sergeant M [REDACTED] M [REDACTED] failed to provide D [REDACTED] R [REDACTED] with a business card.

Allegation J—Abuse of Authority: Sergeant M [REDACTED] S [REDACTED] failed to provide D [REDACTED] R [REDACTED] with a business card.

Allegation K—Abuse of Authority: Detective Paul Mallilo failed to provide D [REDACTED] R [REDACTED] with a business card.

Allegation L—Abuse of Authority: Detective R [REDACTED] J [REDACTED] failed to provide D [REDACTED] R [REDACTED] with a business card.

Allegation M—Abuse of Authority: Detective D [REDACTED] A [REDACTED] failed to provide D [REDACTED] R [REDACTED] with a business card.

Allegation N—Abuse of Authority: Detective S [REDACTED] F [REDACTED] failed to provide D [REDACTED] R [REDACTED] with a business card.

Sgt. M [REDACTED] Sgt. S [REDACTED] Det. Mallilo, Det. A [REDACTED] Det. J [REDACTED] and Det. F [REDACTED] were all operating in support of an ongoing undercover enforcement activity with their buy-and-bust operation during the incident. No officer provided Mr. R [REDACTED] with a business card.

Uniformed members of service “operating in operational support of a UC [undercover member of service]...are exempt from providing business cards due to the sensitive nature of their assignment.” NYPD Patrol Guide Procedure 203-09 (**Board Review 47**).

Sgt. M [REDACTED] Sgt. S [REDACTED] Det. Mallilo, Det. A [REDACTED] Det. J [REDACTED] and Det. F [REDACTED] were all indisputably working “in operational support of” undercover officers UC #1 [REDACTED] and UC #3 [REDACTED] during their buy-and-bust operation. As such, the “sensitive nature of their assignment” absolved them of being required to provide business cards to Mr. R [REDACTED]. It is therefore recommended that **Allegations I–N** be closed as *exonerated*.

Allegation O—Other Misconduct: Sergeant M [REDACTED] M [REDACTED] failed to prepare a memo book entry as required by Patrol Guide Procedure 212-08.

Allegation P—Other Misconduct: Detective Paul Mallilo failed to prepare a memo book entry as required by Patrol Guide Procedure 212-08.

Allegation Q—Other Misconduct: Detective R [REDACTED] J [REDACTED] failed to prepare a memo book entry as required by Patrol Guide Procedure 212-08.

Allegation R—Other Misconduct: Detective S [REDACTED] F [REDACTED] failed to prepare a memo book entry as required by Patrol Guide Procedure 212-08.

It is undisputed that Sgt. M [REDACTED] Det. Mallilo, and Sgt. S [REDACTED] stopped Mr. R [REDACTED] that Det. Mallilo frisked and searched Mr. R [REDACTED] that Det. A [REDACTED] Det. J [REDACTED] and Det. F [REDACTED] responded to the scene as backup; and that Det. A [REDACTED] and Det. J [REDACTED] assisted Sgt. S [REDACTED] and Det. Mallilo with safeguarding Mr. R [REDACTED] before he was un-handcuffed and released.

Det. Mallilo’s memo book entries (**Board Review 48**) include only that, at 4:00 p.m., “1 M/H [Male, Hispanic] stopped 86 St./W 7 St. for UC #1 [REDACTED] buy. Negative.” Det. Mallilo’s memo book entries make no mention frisking or searching Mr. R [REDACTED]. Sgt. M [REDACTED] made no memo book entries (**Board Review 49**) between the positive buy at 3:45 p.m. and the apprehension of Mr. S [REDACTED] at 4:30 p.m. Det. J [REDACTED] memo book entries (**Board Review 50**) for this incident only include the fact that, at 4:00 p.m., there was a positive buy. Det. F [REDACTED] memo book entries (**Board Review 51**) for this incident only note the following: at 3:45 p.m., UC #1 [REDACTED] had the green light; at 4:00 p.m., there was a positive buy; and at 5:00 p.m., he returned to his command.

NYPD Patrol Guide Procedure 212-08 (Board Review 52) requires that all uniformed members of service below the rank of captain and not performing permanent administrative or clerical duties record in an activity log all tasks performed during their tour.

The stop, frisk, and search of Mr. R [REDACTED] were “law enforcement activities” that Sgt. M [REDACTED] and Det. Mallilo undertook during the course of this street stop, so they needed to include them in their memo books. Although Det. Mallilo noted that he stopped Mr. R [REDACTED] he omitted the frisk and search. Sgt. M [REDACTED] Det. J [REDACTED] and Det. F [REDACTED] completely omitted any reference to Mr. R [REDACTED] stop. Given that Sgt. M [REDACTED] Det. Mallilo, and Det. J [REDACTED] all failed to adhere to Patrol Guide Procedure 212-08, it is therefore recommended that they each be cited for *other misconduct* regarding **Allegations O, P, Q, and R**, respectively.

Allegation S—Other Misconduct: Detective Paul Mallilo failed to prepare a stop and frisk report as required by Patrol Guide Procedure 212-11.

During Det. Mallilo’s CCRB interview, he testified (**Board Review 22**) that he was responsible for preparing stop and frisk reports for this buy-and-bust, and that he did prepare one for Mr. R [REDACTED] stop. Det. Mallilo elaborated on the contents of the stop and frisk report, which included Mr. R [REDACTED] demographic information and some basic details of the stop. Although Mr. R [REDACTED] was stopped in the 61st Precinct, the narcotics transaction occurred in the nearby 60th Precinct. No stop and frisk report was prepared regarding this incident in either the 60th Precinct (**Board Review 53**) or the 61st Precinct (**Board Review 54**). There are no stop-and-frisk reports for this incident date filed under Det. Mallilo’s tax identification number (**Board Review 53**).

NYPD Patrol Guide Procedure 212-11 (Board Review 55) requires that all uniformed members of service prepare a stop and frisk report for “EACH [sic] person stopped” in the course of “all Terry Stops/Level 3 encounters” that do not result in a summary arrest.

It is undisputed that, by stopping, handcuffing, frisking, and searching Mr. R [REDACTED] Det. Mallilo and other members of the field team were operating at or above DeBour’s Level 3 during this incident. This stop did not result in a summary arrest. Therefore, a stop and frisk report should have been prepared. It is further undisputed that it was Det. Mallilo’s sole responsibility to prepare a stop and frisk report, should the need arise. Det. Mallilo was therefore required to prepare a stop and frisk report for Mr. R [REDACTED] stop, but failed to do so. It is therefore recommended that Det. Mallilo be cited for *other misconduct* regarding **Allegation S**.

Civilian and Officer CCRB Histories

- Mr. R [REDACTED] has been party to three other CCRB complaints and has been listed as a victim in eight allegations (**Board Review 56**).

○ [REDACTED]

○ [REDACTED]

○ [REDACTED]

- Sgt. M [REDACTED]

○ [REDACTED]

- Det. Mallilo has been a member-of-service for eight years and has been a subject in six other CCRB complaints and nine other allegations, none of which were substantiated. His CCRB history does not reflect any apparent patterns relevant to this investigation.
- Sgt. S [REDACTED]
- Det. J [REDACTED]
- Det. A [REDACTED]
- Det. F [REDACTED]

Mediation, Civil and Criminal Histories

- Mr. R [REDACTED] declined to mediate this complaint.
- A FOIL request was submitted to the New York City Office of the Comptroller on June 17, 2019, regarding any Notices of Claim filed by Mr. R [REDACTED] regarding this incident. That request is still pending as of the writing of this report (**Board Review 57**).
- According to the Office of Court Administration (OCA), Mr. R [REDACTED] has no history of convictions in New York City (**Board Review 58**).

Squad No.: 06

Investigator: [REDACTED] [REDACTED] [REDACTED] 07/29/19
 Signature Print Title & Name Date

Squad Leader: [REDACTED] [REDACTED] [REDACTED] 7/30/19
 Signature Print Title & Name Date

Reviewer: _____
 Signature Print Title & Name Date